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October 2, 2015

FILED VIA DELAFILE
AND VIA ELECTRONIC MAIL
Delaware Public Service Commission
Attn.: Ms. Donna Nickerson
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

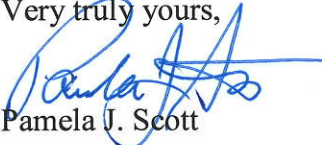
Re: David L. Benfer v. Delmarva Power & Light Company
PSC Docket No. 15-1380

Dear Ms. Nickerson:

Enclosed please find Delmarva Power & Light Company's Motion to Dismiss the above-referenced Complaint, filed pursuant to the provisions of 26 *Del. Admin. C.* 1001, §2.7.1. I respectfully request that this Motion be decided at the earliest convenience of the Hearing Examiner who will be assigned to this docket.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Pamela J. Scott

Enclosure

cc: Jerry Platt (w/enclosure)
Julie Donoghue, Esquire (w/enclosure)
David Bonar (w/enclosure)
Regina Iorii, Esquire (w/enclosure)
David L. Benfer (w/enclosure)
Ms. Judy Rogozinski (w/enclosure)
Ms. Maureen Coyne-Greto (w/enclosure)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE FORMAL)	
COMPLAINT OF DAVID L. BENFER)	Complaint
AGAINST DELMARVA POWER &)	Docket No. 15-1380
LIGHT COMPANY REGARDING A)	
RESTORATION DISPUTE)	
(FILED SEPTEMBER 8, 2015))	

MOTION TO DISMISS

Delmarva Power & Light Company (Delmarva), by and through its undersigned counsel, hereby moves pursuant to 26 *Del. Admin. C.* 1001 §2.7.1, that the complaint filed by David L. Benfer (hereinafter referenced as “Petitioner”) be dismissed with prejudice, for the reasons outlined herein.

1. The Delaware Public Service Commission (“Commission”) has exclusive original jurisdiction to supervise and regulate public utilities pursuant to the provisions of 26 *Del. C.* §201(a). While Delmarva is a public utility regulated by the Commission, the Commission has no regulatory authority over Brandywine Construction Company, Inc. (“BCCI”), or over the work being performed by BCCI on behalf of Delmarva, unless there is an allegation that service to the customer has been impacted, Delmarva’s rates are implicated or a provision of Delmarva’s Gas Tariff (“Tariff”) has been violated.

2. Petitioner makes no claim that Delmarva has failed to provide safe and adequate service, that there is an issue regarding the rates charged for gas service or that Delmarva has violated any provisions of its Tariff. Rather, Petitioner’s claim is

that there was damage to his property as a result of construction work performed by BCCI on behalf of Delmarva. Under these circumstances, the Commission does not have jurisdiction over a property damage claim between Petitioner and Delmarva and/or Delmarva's contractor.

3. The work that was performed in the area of Petitioner's property was work performed within a Delmarva gas line easement. While, generally speaking, Delmarva has authority under its Tariff, Leaf 22, Section XIII. A., to access its equipment, the work that was performed that allegedly impacted Petitioner's property was work performed pursuant to the terms of a private easement agreement. Consistent with the reasoning of the Commission in *McHugh v. Tidewater Utilities, Inc.*, 2002 WL 31399462 (Del. P.S.C.), where the Commission determined that it did not have jurisdiction over a contractual dispute between an unregulated entity and a utility customer, the Commission does not have authority over the manner in which Delmarva performs construction work through a third party contractor pursuant to the terms of an easement agreement. The easement agreement is a private agreement between Delmarva and the property owner who granted the easement.

4. Unlike the situation in *Artestian Water Co. v. Cynwyd Club Apartments, Inc.*, 297 A. 2d 387 (Del. 1972), there is no issue here, such as quality of service standards, that would invoke the jurisdiction of the Commission.

5. The Commission does not sit as a court of law¹ and, therefore, cannot arbitrate property damage claims which are within the province of the courts.

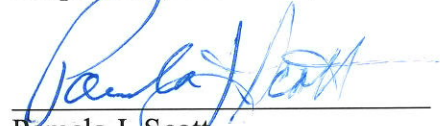
6. Pursuant to an easement granted to Delmarva, Delmarva has the right

¹ *Artestian Water Co. v. Cynwyd Club Apartments, Inc.*, 297 A. 2d 387 (Del. 1972)

and authority to repair and replace its gas facilities. The Commission has no jurisdiction over such matters; therefore, Petitioner's complaint should be dismissed for lack of jurisdiction and failure to state a claim upon which relief can be granted.

WHEREFORE, Delmarva respectfully requests that the Petitioner's complaint be dismissed, with prejudice.

Respectfully submitted,



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Dated: October 2, 2015

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were served upon the following on October 2, 2015 via the manner indicated below:

**VIA ELECTRONIC MAIL AND
FILED VIA DELAFILE**

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**VIA ELECTRONIC MAIL
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**VIA ELECTRONIC MAIL AND
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